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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,408	06/28/1999	ANDREAS FELLINGER	FLA-0010	6097

7590

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 04/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/308,408

Applicant(s)

FELLINGER, ANDREAS

Examiner

Shian T. Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 16, 18 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Applezweig (US 3,409,721). Applezweig discloses a plurality of compartments formed by two flexible sheets of materials. The area between adjacent compartments is sealed. The films are made out of polyethylene and the article is retrievable by punching one of the flexible layers. The material for the package of Applezweig is made out of the same polyethylene material as the present invention and therefore the chamber inherently opens in the same manner as claimed by exerting finger pressure on the film layer. Applicant's argument filed on 2/28/02 has been considered. However, claims 16 and 18 do not require two different types of material for the package but merely two films that form a compartment thereinbetween.

3. Claims 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Roulin et al (US 5,695,063). Roulin et al disclose two flexible film materials that are sealed at reference element 11 as shown in Figures 1A-1C to form a plurality of compartments. The cover sheet is torn by finger pressure. Roulin et al disclosed on column 1, lines 24-30 that "Push-through packs are e.g., such that the lid material is of aluminum foil or an aluminum foil laminate. Aluminum foil is a preferred material for the lids on a blister package, as the thickness of the

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material employed requires relatively little force for it to rupture. The foil is so thin in Roulin et al that even if the reference does not specifically disclose rupturing of the package by placing a finger directly on the cover, the cover is inherently capable of being ruptured by pushing the foil inwardly. Applicant argues that the contents are generally removed by breaking both top and bottom layers and not breaking only the cover layer. What applicant appears to argue is the functional usage of the package. However, this functional use is clearly met by Roulin et al as its' user can easily break only the bottom and not the top layer of the package to retrieve the article. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

4. Claim 18 is rejected under 35 U.S.C. 102(e) as being anticipated by Grabowski (US 5,954,204). Grabowski discloses a blister package comprising a flexible cover and a flexible base. The cover is torn by finger pressure.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applezweig in view of Roulin et al and Troll et al or Gregory et al (US 4,305,502). Applezweig discloses all of the elements, but lacks the convex shaped compartment as recited in claims 17 and 19. However, Roulin et al suggest providing a flexible compartment with a predetermined shape to store the intended article. Troll et al suggest providing, for example only, a convex shaped compartment with a lid sheet thereover. Gregory et al also teach a compartmented package with convex shaped base layer. Hence, it would have been obvious in view of Roulin et al and Troll et al or Gregory et al to provide a convex shaped compartment for the base sheet of Applezweig to conform to the shape of the intended article.

7. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roulin et al in view of Troll et al or Gregory et al. Roulin et al disclose all of the elements, but lacks the convex shaped compartment as recited in claims 17 and 19. However, Troll et al suggest providing, for example only, a convex shaped compartment with a lid sheet thereover. Gregory et al also teach a compartmented package with convex shaped base layer. Hence, it would have been obvious in view of Roulin et al and Troll et al or Gregory et al to provide a convex shaped compartment for the base sheet of Applezweig to conform to the shape of the intended article.

8. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 18, further in view of Official Notice. Applezweig does not suggest using paper as the covering film. However, it is conventional to use paper on a compartmented package for recycling purpose. It would have been obvious in view of Official Notice to use paper as the base layer for the package of Applezweig.

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9. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 18, further in view of Official Notice. Roulin et al does not suggest using paper as the covering film. However, it is conventional to use paper on a compartmented package for recycling purpose. It would have been obvious in view of Official Notice to use paper as the base layer for the package of Roulin et al.

Response to Amendment

10. The examiner has carefully reviewed the claims and the disclosure. However, there is no apparent patentable subject matter in this application that the examiner can suggest to applicant to place the case in condition for allowance.

Conclusion

11. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. **The Group clerical receptionist number is (703) 308-1148 or the Tech Center 3700 Customer Service Center number is (703) 306-5648.**


If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Valerie Douglas at (703)308-1337.

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For applicant's convenience, the Group Technological Center FAX number is (703) 305-3579 or (703)305-3580. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on M-TH 7:00 am until 4:00 pm (EST).

STL
April 15, 2002


Primary Examiner
Shian Luong
Art Unit 3728